

Additional/Revised Information

Agenda Item #	3
Meeting Date	October 22, 2007
Prepared By	Jessie Carpenter City Clerk
Approved By	

Discussion Item	Revision of Title 12, Trees and Vegetation, Chapter 12, Urban Forest
Additional/ Revised Information	<p>The following information was provided by Catherine Tunis, Chair of the Committee on the Environment:</p> <ul style="list-style-type: none"> • Statement from the Committee on the Environment on Proposed Changes to the Tree Ordinance - October 19, 2007 • Graphic on the Tree Removal Permit Process
Policy	N/A
Fiscal Impact	N/A
Attachments	As referenced above.
Recommendation	N/A
Special Consideration	

**Statement from the Committee on the Environment
on Proposed Changes to the Tree Ordinance
October, 19, 2007**

Background:

Chair of the Takoma Park Committee on the Environment, Catherine Tunis, met with Ken Sigman, City Attorney, Todd Bolton, City Arborist, and Daryl Braithwaite, City Public Works Director, on October 18, 2007 to discuss the issues around Sigman's proposed changes to the Tree ordinance. Braithwaite was unable to stay for the entire meeting.

Tunis presented the view that in cases where an applicant appeals the denial of a preliminary permit, the current code as written directs the Tree Commission to, using the same criteria the Arborist would have used, make a decision and notify the parties of that decision. If the Tree Commission found in favor of the applicant, that would resume the permit process at the beginning of the 15-day Public Notice period. Tunis noted that this process is proscribed in the Code at Section 12.12.110 J and presented it graphically.

During extensive re-writing of the law with full discussion between the Tree Commission, the Committee on the Environment, and the Arborist in the early 1990s and enacted by Council in 1995, the above process was clearly the intent of the law. It seems that somehow practice has changed over the years, possibly due to staff and Tree Commission member turnover, the complexity of the code language, and a rarity of preliminary tree permit denials under some Arborists.

It was made clear during the discussion on October 17, 2007 that the Arborist, the Tree Commission, the Committee on the Environment, and the City Attorney all agree that a tree permit should not be issued without an opportunity for public comment and influence on the decision to issue a permit. We discussed the merits of the different approaches—that in the current law as described by Tunis and that proposed by Sigman. At the end of our meeting, however, we were unable to agree on the best method. Thus, given Council's desire to hear the issue this week, we decided to present the options to Council and allow for their decision. We also noted that there are currently no cases before the Tree Commission that would be affected by this issue, but we would not want such a case to arise without this issue resolved, so a Council decision is needed soon but not immediately.

Position of the Committee on the Environment:

As noted above, in cases where an applicant appeals the denial of a preliminary permit, the current code as written directs the Tree Commission to, using the same criteria the Arborist would have used, make a decision and notify the parties of that decision. If the Tree Commission found in favor of the applicant, that would resume the permit process at the beginning of the 15-day Public Notice period. This process is proscribed in the

Code at Section 12.12.110 J: “On appeal from the preliminary decision on a tree permit application, after due consideration of the evidence and testimony and the criteria for permit decisions set forth in Section 12.12.120, the Tree Commission shall issue its decision on the appeal and shall give notice to all interested parties.” This language is distinct from other portions of the law, where the Tree Commission can issue a permit. This process is presented graphically in the attached chart.

It would be best to retain this process rather than change the process as Sigman has suggested because giving notice of a hearing is less likely to elicit citizen input than allow them to file an appeal and learn more about the issues (and possibly resolve them) before a hearing. This is the case because:

- The hearing process is unfamiliar and scary to the average citizen;
- The citizen would be unfamiliar with the issues surrounding that preliminary tree permit decision to date and so would not know how to prepare for a hearing;
- The citizen would have to be available at the set time and date of the hearing, and given the pace of modern life, many find it difficult to be available and prepared; and
- Given all the uncertainties, citizens would be unwilling to invest the time and energy to come to a hearing in many or most cases.

It could be that given the fact that some permits have apparently been issued without public input as a result of Tree Commission decisions on preliminary tree permits, that Council should clarify the language in Section 12.12.110 J. This could be done by adding “In these cases, the Tree Commission decision shall address only the question of the issuance of a preliminary permit. If the Tree Commission determines that the Arborist should have issued a preliminary permit, that permit will be issued and the permit process will resume at the start of the 15-day Notice period.”

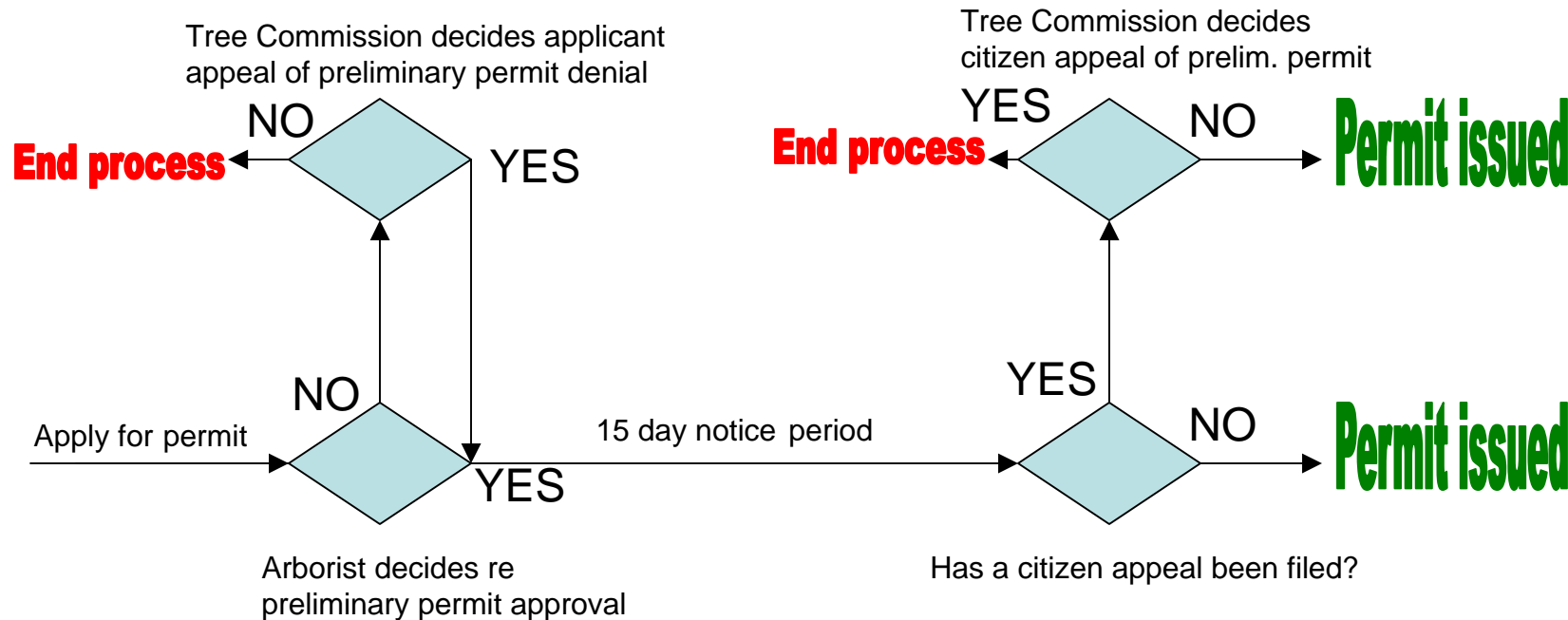
As a general matter (but not as a substitute for the 15-day Notice period), the Committee believes that the idea of providing public notice of Tree Commission hearings and allowing the public to attend and provide relevant information is very good and would serve to demystify the process for citizens and lead to improved public participation and better informed decisions on tree permit issues.

Recommendation of the Committee on the Environment:

The Committee recommends that Council reaffirm the process set out in Section 12.12.110 J that a decision of the Tree Commission on a preliminary tree permit that reverses the denial by an Arborist will place the applicant back into the process at the beginning of the 15-day Notice period. Council may wish to add language to clarify that section further.

If Council is not ready to make a decision at this point, Council may request that the Arborist, Tree Commission, Committee on the Environment, and City Attorney consider the issue further.

Tree Removal Permit Process



This is the tree removal permit process as envisioned in the mid 1990s and earlier. The appeal of a preliminary tree permit denial is pictured on the left side of the chart and proscribed in the Code at Section 12.12.110 J, "On appeal from the preliminary decision on a tree permit application, after due consideration of the evidence and testimony and the criteria for permit decisions set forth in Section 12.12.120, the Tree Commission shall issue its decision on the appeal and shall give notice to all interested parties." This language is distinct from other portions of the law, where the Tree Commission can issue a permit following a citizen appeal. The intent of this Section is clear that the Tree Commission issues only a decision, and if they decide that the preliminary permit should have been issued, the applicant re-enters the process at the point prior to the 15-day Public Notice period. If Council wishes, it could be made more clear by adding a sentence, "In these cases, the Tree Commission decision shall address only the question of the issuance of a preliminary permit."